

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

NOV 21 2019

Clerk, U.S. District Court
District Of Montana
Missoula

In re JACK MAXVILL,

CV 19-167-M-DLC

Petitioner.

ORDER

On October 16, 2019 United States Magistrate Judge Kathleen L. DeSoto entered her Order and Findings and Recommendation recommending that Jack Maxvill's petition for writ of habeas corpus under 28 U.S.C. § 2241 be denied. (Doc. 2.) Maxvill does not object. De novo review is only available for those portions of the Findings and Recommendations to which a petitioner specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

As explained in the Findings and Recommendation, Maxvill is currently in jail awaiting resolution of the state charges against him. (Doc. 2 at 1.) Apparently, there has been some difficulty finding conflict-free counsel to represent him which has resulted in a delay to his case. (*Id.*) Even though a delay in prosecution raises

a potential constitutional claim, Judge DeSoto recommends dismissal of the petition under *Brown v. Ahern*, 676 F.3d 899, 900–01 (2012), because any action taken by the Court at this point would amount to an injunction of ongoing state proceedings. There is no clear error in Judge DeSoto’s determination that Maxvill’s case does not present an “extraordinary circumstance” that would make it an exception to the general rule that federal courts do not interfere with state criminal proceedings. (Doc. 2 at 3.) Nor is there any clear error in Judge DeSoto’s conclusion that this case is clearly controlled by *Brown* and therefore a certificate of appealability should be denied.

IT IS ORDERED that Judge DeSoto’s Findings and Recommendation (Doc. 2) is ADOPTED in full.

1. Maxvill’s Petition (Doc. 1) is DISMISSED without prejudice.
2. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.
3. A certificate of appealability is DENIED.

DATED this 21st day of November, 2019.



Dana L. Christensen, Chief Judge
United States District Court